

DOCKET FILE COPY ORIGINAL

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED

OCT 2 2000

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Amendment of Section 73.622(b),)
Table of Allotments,)
Digital Television Broadcast Stations)
(Corpus Christi, Texas))

MM Docket No. 99-277
RM-9666

To: Chief, Video Services Division, Mass Media Bureau

SUPPLEMENTAL REPLY COMMENTS OF SOUND LEASING, INC.

1. Sound Leasing, Inc. ("Sound"), licensee of Class A television applicant KTOV-LP, Channel 7, Corpus Christi, Texas, filed initial comments in opposition to the proposal in this proceeding but followed with a letter dated November 3, 1999, requesting that its opposition comments be dismissed. These Supplemental Reply Comments are intended to update and to clarify Sound's position. A petition for leave to file is being submitted separately

2. Sound requested that its Comments be dismissed *without prejudice*, in the hope of being able to work out a mutually satisfactory arrangement with Channel 3 of Corpus Christi, Inc. ("Channel 3"), the proponent in RM-9666, for KTOV-LP to co-exist on analog Channel 7 with KIII-TV operating on DTV Channel 8. It was clear from the letter, however, that Sound's position never varied from the fundamental goal of preserving KTOV-LP's existing service and that there was no intent to support any proposal inconsistent with that goal.

3. On September 14, 2000, Channel 3 filed a petition to deny Sound's application to convert KTOV-LP to a Class A station (File No. BLTVA-20000905AAE). That petition makes it apparent that Channel 3 is not prepared to work cooperatively with Sound. Therefore, Sound

No. of Copies rec'd
List ABCDE

014

is adamantly opposed to the allotment of DTV Channel 8 at Corpus Christi and will not change that position unless there is a settlement that preserves the operation and service area of KTOV-LP -- a settlement not currently on the horizon.

4. The proposal to allot DTV Channel 8 to Corpus Christi must fail, because Sound's Class A application, which was timely filed and meets all requirements for Class A status, takes priority over the instant rule making proposal, which was only pending on the date when Sound filed its certification of eligibility for Class A status.^{1/} All parties agree that a Channel 8 DTV station would cause prohibited interference to KTOV-LP operating as a Class A station on Channel 7 with KTOV-LP's currently licensed facilities; so the rule making and the Class A application are in conflict, and the proposed allotment change may not be made.

5. In its petition to deny the KTOV-LP Class A application, Channel 3 attempted to extricate itself from the priority problem by noting that it filed a notification of intent to maximize facilities by the December 31, 1999, deadline specified in the Community Broadcasters Protection Act ("CBPA") and that the CBPA gives maximization applications priority over conflicting Class A applications, including channel assignment changes required to overcome "technical problems." That argument fails for two reasons. First, for priority over a timely Class A application, the CBPA requires not only that a notification of intent to maximize have been filed by December 31, 1999, but also that an actual application for the maximized facilities have been filed by May 1,

^{1/} See *Establishment of a Class A Television Service*, Report and Order in MM Docket No. 00-10, 15 FCC Rcd 6355, released April 9, 2000 ("*Class A R&O*") at par. 40, and at par. 50, where the Commission stated: "In a new DTV allotment rule making, we will require protection of Class A stations."

2000.^{2/} Channel 3 did not comply with the second requirement. A search of the Commission's website, using the CDBS database and the word search tool, discloses that Channel 3 did indeed file a notification of intent to maximize, but it did not file an actual maximization application by May 1, 2000. In fact, it has filed no DTV application at all, maximized or otherwise, and is included on lists the Commission has published of stations that have requested an extension of the November 1, 1999, DTV application deadline.^{3/} Having not filed any DTV application at all, on either Channel 47 or Channel 8, by May 1, 2000, Channel 3 cannot claim any priority over KTOV-LP's Class A application based on the DTV maximization provision of the CBPA.

6. Second, while Channel 3 also referred to the language in the CBPA that makes an exception to Class A protection "to resolve 'technical problems' associated with DTV replication and maximization," and it noted that channel changes are among the solutions that may be used to resolve technical problems, the language of the *Class A R&O* refers to technical problems "requiring an 'engineering solution.'"^{4/} There are no technical problems here that require an engineering solution to achieve DTV replication of KIII's analog service area, which is all that Channel 3 is entitled to claim since it filed no maximization application, or even to achieve maximization were maximization to be taken into account.^{5/} No engineering issues have been

^{2/} See *Class A R&O* at par. 63.

^{3/} It appears that Channel 3 has requested that it be permitted to wait until the conclusion of the instant rule making before being required to file a DTV application of any kind.

^{4/} *Class A R&O* at par. 61.

^{5/} Maximization is portable to a new channel only where a DTV station moves from out-of-core (Channels 52-69) to in-core (Channels 2-51). *Class A R&O* at par. 58. There is no such
(continued...)

raised with either replication or maximization on the existing Channel 47 allotment. The only claim made by Channel 3 is that it could serve more people at *lower cost* on Channel 8 than on Channel 47, not that any interference would exist on Channel 47. Furthermore, Channel 3's claim of serving more people at lower cost is based on its own self-selected power levels for Channels 47 and 8 -- power levels based on *cost* factors, not technical factors.^{6/} Indeed, Channel 3 has made no showing of coverage with maximized facilities on either Channel 47 or Channel 8; so no weight can be given to its comparative coverage argument.

7. It is important to note that Channel 3 does not plan to occupy either Channel 47 or Channel 8 at the end of the DTV transition and thus does not want to invest in more than minimal transitional facilities on either channel. Rather, it plans to shift its DTV operation to its present analog Channel 3.^{7/} No suggestion has been made by anyone anywhere that there are any technical problems at all with Channel 3. Thus at best, Channel 3 is claiming problems on an interim DTV channel that it intends to abandon; and these problems are based only on its own budgetary considerations, not on technical issues. There is nothing in the CBPA or elsewhere that gives priority to either operation on an interim channel or a television station's budgetary preferences.

8. Finally, as between Channel 8 and Channel 47, it is Channel 8 that has the greater technical problems, as evidenced by the Comments of the University of Houston System, licensee

(...continued)

movement here, because both Channel 47 and Channel 8 are in-core.

6/ See Channel 3's "Supplement to Petition for Rulemaking" filed August 5, 1999.

7/ *Id.*


of KUHT, which operates NTSC Channel 8 at Houston, Texas, pointing out the potential for co-channel interference between KUHT and KIII-DT because of Gulf Coast signal skipping, also known as "ducting." In addition, operation by KIII-DT on Channel 8 will almost surely displace co-channel KTMV-LP, which operates on Channel 8 at Corpus Christi only about 17 km from the KIII transmitter site.^{8/} In other words, a change to Channel 8 will either will be neutral or will cause technical problems, not relieve them. Thus there is no basis at all to give the rule making proposal any priority over Sound's Class A application for KTOV-LP; rather, the CBPA mandates that Sound's application receive priority and that the proposal to allot DTV Channel 8 to Corpus Christi be denied.

9. While it might be appropriate to accommodate Channel 3's preference in a vacuum, there are other factors in play here; and it is clear that under the CBPA, the allotment change proposed in this proceeding must fail.

Irwin, Campbell & Tannenwald, P.C.
1730 Rhode Island Ave., N.W., Suite 200
Washington, DC 20036-3101
Tel. 202-728-0401 ext. 105
Fax 202-728-0354

October 2, 2000

Respectfully submitted,


Peter Tannenwald

Counsel for Sound Leasing, Inc.

^{8/} In *Advanced Television Systems*, Sixth Report and Order in MM Docket No. 87-268, 12 FCC Rcd 14588, 14671 (1997), the Commission explicitly warned that it would review all requests for modification of the DTV Table for their impact on low power stations" and that proposed modifications to the DTV Table of Allotments should "avoid impact on such stations wherever possible."

CERTIFICATE OF SERVICE

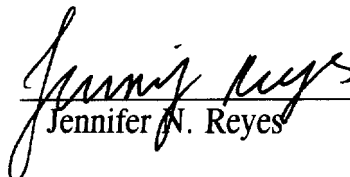
I, Jennifer N. Reyes, do hereby certify that I have, this 2nd day of October, 2000, caused to be sent by first class United States mail, postage prepaid, copies of the foregoing "Supplemental Comments of Sound Leasing, Inc." to the following:

Robert B. Jacobi, Esq.
Cohn and Marks
1920 N St., N.W., Suite 200
Washington, DC 20036-1622
Counsel for Channel 3 of Corpus Christi, Inc.

Todd D. Gray, Esq.
Dow, Lohnes & Albertson, PLLP
1200 New Hampshire Ave., N.W.
Washington, DC 20036-6802
Counsel for University of Houston System

Margaret L. Tobey, Esq.
Morrison & Foerster, LLP
2000 Pennsylvania Av., N.W., Suite 5500
Washington, DC 20006-1888
Alamo Public Telecommunications Council

Pam Blumenthal, Esq. (by hand delivery to Portals lobby drop point)
Video Services Division
Mass Media Bureau
Room 2A-762
Federal Communications Commission
Washington, DC 20554


Jennifer N. Reyes